

# NATIONAL MEDIATION BOARD

ANNUAL PERFORMANCE  
AND ACCOUNTABILITY  
REPORT FY2012

## PRESIDENTIAL EMERGENCY BOARDS (PEBS) OVERVIEW

### REPRESENTATION & PEBS

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Section 159A (Section 9A) of the Railway Labor Act (RLA) provides special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. Section 160 (Section 10) of the RLA covers all other railroads and airlines.

When the National Mediation Board determines that a collective-bargaining dispute cannot be resolved in mediation, the agency proffers Interest Arbitration to the parties. Either labor or management may refuse the proffer and, after a 30-day cooling-off period, engage in a strike, implement new contract terms, or engage in other types of economic Self Help, unless a Presidential Emergency Board is established.

If the NMB determines, pursuant to Section 160 of the RLA, that a dispute threatens substantially to interrupt interstate commerce to a degree that will deprive any section of the country of essential transportation service, the NMB notifies the President. The President may, at his discretion, establish a PEB to investigate and report respecting such dispute.

Status-quo conditions must be maintained throughout the period that the PEB is impaneled and for 30 days following the PEB report to the President. If no agreement is reached, and there is no intervention by Congress, the parties are free to engage in self-help 30 days after the PEB report to the President.

Apart from the emergency board procedures provided by Section 160 of the RLA, Section 159A (Section 9a) provides special, multi-step emergency procedures for unresolved disputes affecting employees on publicly funded and operated commuter railroads. If the Mediation procedures are exhausted, the parties to the dispute or the Governor of any state where the railroad operates may request that the President establish a PEB. The President is required to establish such a board if requested. If no settlement is reached within 60 days following the creation of the PEB, the NMB is required to conduct a public hearing on the dispute. If there is no settlement within 120 days after the creation of the PEB, any party or the Governor of any affected state, may request a second, final-offer PEB. No Self-Help is permitted pending the exhaustion of these emergency procedures.

<sup>1</sup> The NCCC represents all major Class I freight railroads in the United States as well as many smaller freight and passenger lines in national collective bargaining. The Carriers involved in this dispute include five Class I railroads: Union Pacific Railroad; BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and The Kansas City Southern Railway Company; and the following railroads: Alton & Southern Railway Company; The Belt Railway Company of Chicago; Brownsville and Matamoros Bridge Company; Central California Traction Company; Columbia & Cowlitz Railway Company; Consolidated Rail Corporation; Gary Railway Company; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; Manufacturers Railway Company; New Orleans Public Belt Railroad; Norfolk & Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation; Oakland Terminal Railway; Port Terminal Railroad Association; Portland Terminal Railroad Company; Soo Line Railroad Company (Canadian Pacific); South Carolina Public Railways; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Pacific Fruit Express; Western Fruit Express Company; Wichita Terminal Association; and Winston-Salem Southbound Railway Company.

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### PEB HIGHLIGHTS

During fiscal year 2012, only one PEB was created: Presidential Emergency Board 243. This was a Section 160 PEB.

In November 2009, pursuant to Section 6 of the RLA, the National Carrier's Conference Committee (NCCC)<sup>1</sup> served on the Organizations<sup>2</sup> formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations; and applications were filed with the NMB by the separate crafts or classes now bargaining as the CRU in July 2010, and by the RLBC in January 2011.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and Board Members in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On September 2, 2011, the NMB, in accordance with Section 5, First, of the RLA, urged the NCCC and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On September 2, 2011, the Organizations individually declined the NMB's proffer of arbitration and the NCCC accepted the NMB's proffer of arbitration.

On September 6, 2011, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Friday, October 7, 2011.

Following the termination of mediation services, the NMB advised President Obama, in accordance with Section 10 of the RLA, that in its judgment the disputes threaten substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service. The President, acting within his discretionary authority, issued an Executive Order on October 6, 2011. Effective 12:01 a.m., Eastern Daylight Time, on October 7, 2011, the Executive Order created Presidential Emergency Board 243 to investigate and report concerning the disputes and triggered a "cooling off" period under the provisions of the RLA. The President appointed Ira F. Jaffe, as Chairman of the Board, and Roberta Golick, Joshua M. Javits, Gilbert H. Vernon and Arnold M. Zack, as Members. The Board submitted its Report to the President on November 5, 2011.

<sup>2</sup> The Brotherhood of Railroad Signalmen ("BRS") representing Signalmen; Brotherhood of Locomotive Engineers and Trainmen ("BLET") representing Engineers; Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters ("BMWED") representing Maintenance of Way employees; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers ("IBB") representing Boilermakers; Sheet Metal Workers' International Association ("SMWIA") representing Sheet Metal Workers; and the National Conference of Firemen & Oilers ("NCFO") representing Firemen and Oilers; are bargaining together as the Rail Labor Bargaining Coalition ("RLBC").

The Transportation-Communications International Union ("TCU") representing Clerks and Carmen; American Train Dispatchers Union (ATDA) representing Train Dispatchers; International Association of Machinists and Aerospace Workers ("IAMAW") representing Machinists; International Brotherhood of Electrical Workers ("IBEW") representing Electrical Workers; and Transport Workers Union ("TWU") representing Carmen; are bargaining collectively as the Coalition of Rail Unions ("CRU").

Collectively, the organizations in the RLBC represent approximately 56,000 employees and the organizations in the CRU represent approximately 34,000 employees. All eleven Organizations will be referred to collectively hereinafter as the "Organizations."